IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3648 OF 2002

H.P.Daga and Company .. Applicant

Versus

Niwas spinning Mills Ltd.

and Ors. .. Respondents

Mr.Ganesh Gole for applicant

Mr.V.P.Vaze for respondent Nos. 1 to 6

Mr.S.S.Pednekar, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 29th November 2005.

P.C.

. Heard Mr.Gole, learned Advocate for

applicant, Mr.Vaze for respondent Nos. 1 to 6 and A.P.P. for respondent No.7.

2. Applicant is original complainant. He has filed a complaint bearing C.C.208 of 2000 in the Court of Chief Judicial Magistrate, Solapur against respondent Nos. 1 to 7 for offences punishable under section 418, 465, 469, 471 and 500 read with 34 I.P.C. and under section 224, 227, 230 of Companies Act.

3. Initially it appears that the learned Judge directed police to investigate and issued an order in that behalf on 9th August 2000. Complaint was to be forwarded to concerned police station for investigation by this order. Prior to returnable date stipulated in the said order, verification statement was recorded and thereafter the learned Judge proceeded to issue process against all the accused (respondent Nos. 1 to 7 herein). This was done although a

negative report was submitted by the police.

4. Aggrieved by these orders, criminal revision application was preferred by respondent Nos. 1 and 2 and the learned Judge allowed the same by his order dated 25th June 2002.

5. Mr.Gole, appearing for applicant submits that the sessions Judge was in error in reversing this order inasmuch as all that the learned Magistrate had done was to issue a process. He has satisfied himself from the averments in the complaint that it discloses commission of offences prima facie and therefore, directed that the accused be summoned before him. This was well within his powers and if any irregularity was committed by him in exercise of the same that could not have been set right in revisional jurisdiction. Revisional jurisdiction is not meant to correct all procedural irregularities, unless and until, the same have resulted in

manifest injustice. In this case, such being not a grievance, learned Judge was in error in exercising his revisional jurisdiction.

6. With the assistance of Mr.Gole, I have perused the complaint. In my view, apart from the fact that the Magistrate erred in issuing process relying upon the verification statement even prior to returnable date, the complaint read as a whole is nothing but a grievance of an auditor who was engaged by the company. The complaint really is because of the fact that the auditor has been removed by A.G.M. and substituted by another firm. It is not the case of applicant herein that the company cannot exercise its powers under the Articles of Association and move a resolution before A.G.M. for change of auditors. Apart from that, the company has in the correspondence called upon the applicant herein to furnish his report expeditiously and on account of dispute and

differences because of the alleged delay, thereafter, proceeded to appoint a new auditor. Such a grievance cannot be a subject matter of a criminal complaint merely because while the auditor was replaced, reliance is placed upon a resignation of the earlier auditor. Ingrediants of provisions which are relied upon are lacking and the complaint does not disclose commission of any offence, much less, those under the penal code. In these circumstances, it is not necessary to pronounce upon legal issues The complaint itself did not disclose commission of offences for summoning persons including nominal directors. It is clearly an abuse of the process of the court. Petition, therefore, is devoid of any merits and is accordingly dismissed.

(S.C.DHARMADHIKARI, J)